IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2049 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SOUTH GUJARAT TOURIST VEHICLESASSOCIATION - Petitioner

Versus

STATE OF GUJARAT & 1 - Respondents

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Appearance :
Ms Samira S.Shah for MR SN SOPARKAR, advocate for Petitioner.
MR MUKESH A. PATEL, ASSTT.GOVERNMENT PLEADER for Respondents.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 30/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Article 226 of the Constitution of India, the petitioner i.e. South Gujarat Tourist Vehicles Association, has prayed to declare that the Bombay Motor Vehicles Tax (Gujarat Amendment) Act, 1991 and the Bombay Motor Vehicles Tax (Gujarat Amendment) Ordinance, 1991 are ultra vires the Constitution of India.

2. The petitioner is a registered Association of the Tourist Vehicle Operators situate at South Gujarat. Under the provisions of the Motor Vehicles Act, 1988, the terms “contract carriage”, “Omnibus” and “stage carriage” are defined in Clauses (7), (29) & (40) of Section 2 of the Act. The Bombay Motor Vehicles Tax Act, 1958 seeks to levy and collect tax on all motor vehicles, used or kept for use in the State. Under Section 3-A of the Act, prior to its substitution by the impugned Act, tax was levied and collected on all omnibuses, which were used or kept for use in the State exclusively as contract carriage on the monthly, weekly, or daily rate. Under old Section 3-A of the Act, additional tax was levied, which was required to be paid in advance either on monthly basis, or for any

period less than a week or on daily basis at the rates specified in the table forming part of sub-section(1) of the said Section. The position was, therefore, that no omnibus could have been plied on the roads, unless additional tax was paid in advance, and at the time of payment of additional tax, the number of days/weeks, for which tax was required to be paid, was to be decided. Thus, depending upon the number of days, for which the vehicle was plied on the State roads, tax was required to be paid. The case of the petitioner is that the provision, earlier operating, was rational, inasmuch as tax was linked with the user, but, on account of the impugned Act, though the rate of tax is sought to be reduced, the facility of payment of tax even for a part of a month or week is withdrawn, and transport operators are required to pay tax flatly for the whole month irrespective of number of days for which the vehicle is put to use. According to the petitioner, the impugned Act is ultra vires Article 301 of the Constitution, which guarantees that trade, commerce and intercourse through out the territory of India shall be free. What is maintained by the petitioner is that because of the impugned Act, burden of vehicles tax is going to be so harsh, disproportionate, irrational and confiscatory that it

would seriously impede, interrupt and affect the free movement of trade, commerce and intercourse guaranteed under Article 301 of the Constitution. It is also the case of the petitioner that the impugned Act is violative of Article 19(1)(g) of the Constitution and is not saved by the provisions of Article 19(6) of the Constitution, inasmuch as it is a fundamental right of the transport operators to carry on such trade and business, but, the purpose of enacting the impugned Act is to create a situation whereby the said business would become thoroughly unprofitable. It may be stated that on these very grounds, the provisions of the Bombay Motor Vehicles Tax (Gujarat Amendment) Ordinance, 1991 are also challenged. The petitioner has, therefore, filed the instant petition and claimed reliefs to which reference is made earlier.

3. This Court has heard Ms.Samira S.Shah, learned counsel for the petitioner, and Mr.Mukesh A.Patel, learned Assistant Government Pleader appearing for the State, at length and in great detail.

4. It may be stated that the Gujarat State Legislature amended the Bombay Motor Vehicles Tax Act, 1958 by Act 3 of 1992, as a result of which, sub-

section(5) of Section 3A was substituted. It dealt with the cases of Omnibuses. By sub-clause (a) to sub-section (5), an owner of an omnibus is entitled to refund of the tax upto a maximum of three months in a year on proof of non-user. If refund is claimed for more than three years, he must establish non-user of omnibus for reasons beyond his control to the satisfaction of an authorised officer. The consequence is that on account of non-user of omnibus, the owner or person having possession or control over the vehicle, can get refund of the tax for a period of three months, if he shows that the omnibus had not been used or kept for use during that period. The provisions of the Bombay Motor Vehicles Tax Act, 1958 as amended by Act 3 of 1992 were challenged before this Court in Special Civil Application No.10056 of 1996, which was filed by Kaushikbhai K.Patel against State of Gujarat. After hearing the learned counsels for the parties, the Division Bench comprising the Chief Justice Mr.K.Shreedharan and Mr.Justice A.R.Dave, passed following operative order :

> “Above discussion leads to the following conclusion:
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> We allow this petition and the words “for reasons beyond the control of such owner or person”

occurring in clause(b) of sub-section(5) of Section 3A of the Bombay Motor Vehicles Tax Act, 1958, as amended by Act 3 of 1992 is struck down as being beyond the legislative competence of the State Legislature. Respondents are directed to pass appropriate orders on the claim put forth by the petitioners for refund of the tax for the period from 1.7.1995 upto 31.3.1996 in relation to his omnibus, bearing registration No.QRO 8403 as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. Rule is made absolute accordingly. No costs."

The judgment delivered by the High Court in Special Civil Application No.10056 of 1996 was challenged before the Supreme Court. In State of Gujarat & Ors. vs. Kaushikbhai K.Patel & Anr, AIR 2000 SC 2175, the Supreme Court has held in Para(9) of the reported decision as under:

"In the Statement of Objects and Reasons appended to the amending Act 3 of 1992, it is stated : "Having regard to the commercial use of omnibuses exclusively used as contract carriages in normal circumstances, it is generally uneconomic for the registered owners of such omnibuses to put such omnibuses to non-use for a very long time. Cases have come to the notice of the Government indicating that many a time such omnibuses which purported to have

been put to non-use were operated clandestinely resulting in evasion of the tax and consequent loss of revenue to the Government. In order, therefore, to prevent evasion of tax, it was considered necessary to make a provision to restrict the refund of the tax to a total period of three months of non-use in a financial year, in normal circumstances. However, in order to meet with the genuine cases where such an omnibus may have to be put to non-use for a period exceeding three months on account of reasons beyond the control of the registered owner, provision is made for refund of tax for non-use of the omnibus for a period exceeding three months". Otherwise also various provisions and safeguards are available in the Act. The authorities have enough powers to check evasion of tax even without insisting for the reasons beyond the control of registered owner or person as to the reasons for non-use. A registered owner or the person in possession in addition to filing of Form NT, can be directed to surrender the registration certificate, fitness certificate etc. for the period of non-use. If the vehicles are clandestinely put to use without the certificate of registration, fitness certificate of taxation certificate, it is open to the authorities to take action against the owner in accordance with law. Mere apprehension of clandestinely use of a vehicle cannot be a ground for imposing tax on omnibuses which are not put on road or kept away from use. In Form NT (Annexure P-4) a declaration is made as to the place where the vehicle is kept for non-use and further declaration is made that the owner shall not remove the said vehicle from the said place without the previous permission of the

taxation authority. In the said Form, it is also stated that the certificate of taxation in respect of the said vehicle is also surrendered. Motor Vehicle Inspectors could also check and verify about the availability of the vehicle in place of “non-use”. Any clandestine operation or the absence of vehicle from the declared place of non-use whenever and wherever detected, attracts heavy penalty to the extent of 25% of the tax due and for repetition of such contraventions, the amount of penalty is coercively increased. Further, claim for refund of tax for the period of non-use of vehicle is allowed only if the owner or any person having possession or control of a designated omnibus proves to the satisfaction of the taxation authority that the bus in respect of which the tax has been paid has not been used or kept for use for a particular period. If the authorities are not satisfied as to the non-use of vehicle it is open to them to deny claim for refund. There is sufficient authority and machinery to the appellants to prevent evasion of tax in this regard. Looking to the Statement of Objects and Reasons for the amendment, it appears that the appellants do not trust the owners of omnibuses or their own officers and machinery. Mere apprehension of the appellants that omnibuses will be clandestinely operated and claim would be made for refund on the ground of their non-use, in our opinion, cannot justify for the insistence of satisfaction as to the reasons beyond the control of the owner or person for non-use of a omnibus, This apart, there is no good reason put forward as to why the omnibuses are singled out. Even heavy goods

transport vehicles are also purchased by investing heavy amount. In other words, the condition that for a period of non-use beyond three months, the owner or a person in possession or control of vehicle should satisfy the reasons beyond the control for non-use of vehicle is attached to omnibuses and not to other vehicles. If the appellants see any difficulty in working of their officers in the matter of checking evasion of tax, that itself is not a good ground to uphold the validity of the condition that an owner or possessor of a vehicle should satisfy as to the non-use of omnibus for the reasons beyond his control in order to claim refund of tax for a period exceeding three months.

Thus, having regard to all aspects, we do not find any good or valid reason to interfere with the judgment and order under appeal. Consequently, we dismiss it with costs."

The above-quoted paragraph from the judgment delivered by the Supreme Court makes it very evident that the condition that for a period of non-use beyond three months, the owner or a person in possession or control of vehicle should satisfy the reasons beyond the control for non-use of vehicle attached to omnibuses and not to the other vehicles, is not a valid condition.

5. As far as validity of Rule 5(1)& (2) of the Bombay

Motor Vehicles Tax Rules, 1959 is concerned, this court finds that the provisions of abovereferredto two sub-rules were challenged in Special Civil Application No.1288 of 2001, which was heard with other cognate matters filed by Akhil Gujarat Pravasi Vahan Sanchalak MahaMandal against State of Gujarat, and the Division Bench comprising Chief Justice Mr.D.M.Dharmadhikari (as he than was)and Mr.Justice K.R.Vyas (as he then was) delivered judgment on August 17, 2001 striking down the provisions. The operative part of the judgment reads as under :

> “The foregoing discussion would lead us to the only conclusion that section 3A(1) and (2) of the Bombay Motor Vehicles Tax Act, 1958 and amendment of Rule 5 of Bombay Motor Vehicles Tax Rules, 1959 incorporated in the notification dated 6.2.2001 and subsequent circular dated 8.2.2001 are beyond legislative competence and therefore, they are required to be struck down.
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> In the result, all these petitions are partly allowed. We issue a writ of certiorari and set aside section 3A(1) and (2) of the Bombay Motor Vehicles Tax Act, 1958 and Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959 incorporated in the Notification dated 6.2.2001 qua Rule 5 only declaring them as beyond the legislative competence and, therefore, illegal, bad and without authority of law. Hence, we strike down the said provisions. We, therefore, issue

a writ of mandamus directing the respondents, their men, agent or servants not to implement the notification dated 6.2.2001 and to recover tax in pursuance thereto from the vehicles which are kept for non-use. On the same reasoning, we also quash and set aside the Amendment Act No.11 of 2000 as well as Ordinance No.3 of 2000. We also direct the respondents to grant refund of advance tax already recovered from the petitioners in pursuance of the Act. Rules, Amending Act No.11 of 2000, Ordinance No.3 of 2000, impugned notification dated 6.2.2001 and/or subsequent circular dated 8.2.2001, within three months from the date of receipt of this judgment, after examining the case of non-use of the vehicle, submitted by the petitioners.

Rule in all matters is accordingly made absolute with no order as to costs."

6. Feeling aggrieved by the decision of the High Court, the State Government carried the matter before the Supreme Court. In State of Gujarat and others vs. Akhil Gujarat Pravasi V.S.Mahamandal and others, AIR 2004 SC 3894, the Supreme Court, in Paragraphs 22 & 23 of the reported decision, has held as under :

"Learned counsel for the writ petitioners has also submitted that only contract carriages which are designated as omnibuses and luxury or tourist designated omnibuses have been subjected to a very heavy tax under Section 3-A of the Act, whilst all

other vehicles are taxed under Section 3 of the Act and whereunder the quantum of tax is much lower as would be evident from First to Seventh Schedule of the Act. The submission is that these vehicles have been discriminated against in the matter of taxation and there is no lawful justification for meeting out such differential treatment to them. We are unable to accept the submission made. A similar contention was negatived in G.K.Krishnan v. State of Tamil Nadu, AIR 1975 SC 583 on the ground that the classification of vehicles as stage carriage and contract carriage for the purpose of imposing a higher tax on the latter is presumed to be reasonable having regard to the fact that it was based on local conditions of which the Government was fully cognizant and the differentiation thus made has reasonable relation to the purpose of the Act. A similar contention made in Malwa Bus Service v. State of Punjab, AIR 1983 SC 634, was repelled and it was held as under :

“.....There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But, it is well settled that a Legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The

mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity.....”

It was further held that the Courts lean more readily in favour of upholding the constitutionality of taxing law in view of the complexities involved in the social and economic life of the community. Unless the fiscal law in question is manifestly discriminatory, the Court should refrain from striking it down on the ground of discrimination. This being the position of law, it is not possible to accept the contention of the writ petitioners that the tax imposed upon the designated omnibuses is discriminatory.

Nothing new has been pointed out to challenge Gujarat Act No.9 of 2002 by which the Bombay Motor Vehicles Taxation Act, as adopted in the State of Gujarat with up-to-date amendments, was further amended after the decision of the High Court which was rendered on 17th August, 2001. In fact, the main argument of the learned counsel for the writ petitioners is that the said amending Act merely re-arranged the Sections and suffered from the same infirmity as the previous Act. Since we are of the opinion that the view taken by the High Court is not correct and Section 3-A and Rule-5 of the Rules, as incorporated vide notification dated 6.2.2001 are intra vires and are perfectly valid, the challenge made to Gujarat Act No.9 of 2002 has no substance and must fall.”

The above-quoted paragraphs make it evident that provisions of Section 3A of the Act and Rule-5 of the Rules as incorporated vide Notification dated 6.2.2001 are held to be intra vires and perfectly valid.

7. In view of abovereferredto two decisions of the Supreme Court, this Court is of the opinion that prayer made in Paragraph-8(A) cannot be granted, though Section 3A stands deleted by virtue of the Bombay Motor Vehicles Tax (Gujarat Amendment and Validation) Act, 2002. As far as prayer claimed in Paragraph-8(AA) is concerned, this Court finds that the said prayer is already granted by the Supreme Court and, therefore, nothing further is required to be done by this Court in the instant petition.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

[J.M.PANCHAL,J.]

[BANKIM.N.MEHTA,J.]

(patel)